

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Arbitration Case No.32 of 2005

Date of Decision: April 26, 2007

M/s.Kundan Lal Pyare Lal

....Petitioner

through Mr.Rakesh Garg , Advocate

v.

Union of India and others

....Respondents

through Mr.S.K.Sharma, Advocate

CORAM: HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

VIJENDER JAIN, CHIEF JUSTICE (ORAL)

The arbitration clause is admitted by the parties. It is also admitted by the respondents that the said clause was invoked by the petitioner vide its letter dated 14.8.2001, Annexure P-3, however, the matter was not referred to the arbitration on the plea of barred by limitation of three years from the date of payment of final bill i.e. 19.6.1998.

Learned counsel for the respondents vehemently contended that no live claim subsists in the present case because the petitioner has failed to invoke the arbitration clause within three years from the date of payment of final bill.

I am afraid that the contention of learned counsel for the respondents

is without any merit as the petitioner in pursuance to Annexure P/2, dated 19.2.1998 had informed the respondents that the claims listed in Appendix 'A' are over and above the final bill which is to the following effect:-

“We have signed the final bill for the subject work `under protest since it does include payment for certain items of work and other claims which are otherwise legitimately due and payable to us under the contract agreement and the provisions of the Indian Contract Act, 1872. List of the said claims/items of work are given in Appendix 1A' to this letter.

Claims listed in Appendix 'A' are over and above the final Bill (agreed portion) and retention money furnished in the shape of Bank Guarantee. It is requested that the said claims be included in the Final bill before finalizing the same. The final bill be progressed for payment in accordance with the contract conditions.”

From the aforesaid letter, it is apparent that the claims listed in Appendix 'A' were over and above the final bill. Although it is contended by the learned counsel for the petitioner that payment of Rs.19,000/- out of the final bill is still due but I am not going into that question.

The issue of limitation has already been settled by me in **M/s.Kartar Singh & Co. v. Punjab State Electricity Board and others**, Arbitration Case No.27 of 2005, decided on 30.3.2007 and **M/s Emm Enn Associates v. Commander Works Engineers and others**, Arbitration Case No.268 of 2006, decided on 30.3.2007. Moreover, as per ratio of the Supreme Court in **SBP and Co. v. Patel Engineering Ltd. and another**, (2005)8 SCC 618 and **Union of India and another v. M/s.L.K.Ahuja and Co.**, AIR 1988 SC 1172 that if the claim is alive and the same has not been adjudicated, then the respondent cannot take the plea in the absence of an Arbitrable Tribunal, in terms of the arbitration clause, that an Arbitrable Tribunal cannot be constituted on

account of period of limitation. If aforesaid contention of learned counsel for the respondents is accepted, then any opposite party, in spite of having live claim raised by the petitioner, would not appoint an Arbitrator and if a petition in that regard is filed, would take a plea that invocation of the arbitration clause is beyond the period of limitation. I do not see any merit in the submission of learned counsel for the respondents as the respondents have failed to supply the vacancy and, therefore, have forfeited their right to appoint the Arbitrator.

With the consent of parties, Justice A.L.Bahri (retired Judge of Punjab & Haryana High Court) is appointed as the sole Arbitrator to adjudicate upon all the disputes between the parties.

The Arbitrator shall fix his own fee.

The intimation of appointment be sent to the Arbitrator.

Parties to appear before the Arbitrator on 19.5.2007 at 4.00 P.M..

Petition stands disposed of.

April 26, 2007

RC

**(VIJENDER JAIN)
CHIEF JUSTICE**